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Attending NCAI is a good opportunity to network with and work with other Tribal Leaders because our issues are the same lands, treaties, self-determination, education, economic development and much more. Working together and collectively strengthen our causes when dealing with the Federal Government.

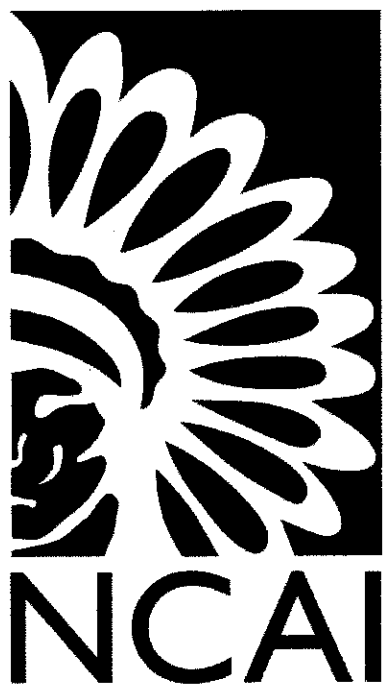
While attending I was privileged to assist on the NCAI Election Committee and the Mid West caucus election for area Vice President on NCAI held on October 13, 2013. Elected as President Brian Caldoosby, Swinomich Indian Community Tribal Council, Vice-President Michael Finley, Colville Vice-Chair, Treasurer Dennis Welsh, Jr. council member Colorado River Indians Tribes, Recording Secretary Robert Shepard of Sisseton Wahpeton Oyate Council. Mid West Area Vice President on NCAI Chairperson Aaron Payment, Sault Ste. Marie Tribe of Chippewa Indians. The terms are for two years each. There was a tie for President between Joe Garica and Brian Caldoosgy a runoff election was held. It was an exciting time.

Sessions I attend other than general assembly's were; World Conference on Indigenous Peoples (2), Task force on Violence Against women, Tribal Sovereignty, Sacred but Still Contested, Planning for Ongoing Fiscal Crises; Mid West area caucus meetings (2).

The importance of attending is the information and the knowledge gained at these conferences, which help me when making an informed decision on issues that are presented on different subjects at council meetings, which in turn effect our duty to our Tribal Citizens. Knowledge is "power" when it is used in a good and correct way.

Miigwech, to our Community for allowing me to serve.

Bea Law, Council Person 0860



NATIVE AMERICAN RIGHTS FUND

TRIBAL SUPREME COURT PROJECT UPDATE

Includes:

1. Michigan v. Bay Mills Litigation Memo
2. National Labor Relations Board Litigation Memo
3. Update of Recent Cases
4. *Carcieri* litigation update
5. *Adoptive Couple v. Baby Girl* Analysis
Association on American Indian Affairs
National Indian Child Welfare Association

*Join
in cases
Don't act
alone*

*Correct
John Dasset*



NATIONAL CONGRESS OF AMERICAN INDIANS

2013 Annual Convention – October 13-18, 2013

Tulsa, Oklahoma

BUDGET AND APPROPRIATIONS UPDATE

- Many Government Operations Remain Shutdown
- Mini CRs Would Reopen Some Tribal Governmental Services
- NCAI Continues To Urge Relief From Sequestration

As this update goes to print, the partial government shutdown continues across the nation with urgent and significant impacts to Indian Country and the House and Senate remain at odds over how to reopen government operations. NCAI continues to call for Congress to reach a longer-term budget agreement that meets the nation's obligations to tribal nations and Native peoples. The federal government has made treaty commitments to tribal people, and in return tribes ceded the vast lands that make up the United States. **The fiscal solution for Indian Country must remove sequestration reductions to critical tribal operations for FY2014 in addition to reopening critical government operations.**

The failure to come to a budget agreement threatens the capacity of tribal governments to deliver basic governmental services to their citizens. The federal government has made treaty commitments to our people, and in return we ceded the vast lands that make up the United States. The immediate shutdown crisis poses very real threats to tribal governments and denies health, nutrition, and other basic services to the most vulnerable tribal citizens.

Even if the shutdown is resolved soon, a greater crisis remains – both the House and Senate versions of the Continuing Resolution sustained the devastating FY 2013 sequestration cuts. The sequester has deeply affected tribal programs: the Indian Health Service, Indian education funding streams, law enforcement, infrastructure programs such as housing and road maintenance, Head Start, and others. These funding commitments serve some of our nation's most vulnerable citizens and are part of the federal government's trust responsibility to tribal nations.

As Washington faces the threefold crisis of the shutdown, sequester, and debt limit, we call on the Congress to reach a long-term budget deal that meets the nation's obligations to tribal nations and Native peoples. It is time to address the ongoing fiscal crisis caused by the sequester.

Mini Continuing Resolutions

The House has begun to advance targeted Continuing Resolutions at current spending levels (which maintain sequestration) to reopen what are considered critical areas of government operations until December 15, 2013. These "mini CRs" include four that would affect Indian Country and tribal programs.

One of the measures, H.J. Res. 80, American Indian and Alaska Native, Health, Education, and Safety Act, provides immediate funding for the Bureau of Indian Affairs, Bureau of Indian Education, and Indian Health Service at the same rate and under the same conditions as in effect at the end of the just completed fiscal year. Funds are available until another appropriation (such as regular bill or CR) is enacted for these operations or December 15, 2013. Three others would also be important for Indian Country: H.J. Res. 83: Impact Aid for Local Schools, H.J. Res. 84: Head Start for Low-Income Children Act and H.J. Res. 75: Nutrition Assistance for Low-Income Women and Children Act, which provides immediate funding for the Special Supplemental Nutrition Program for Women, Infants, and Children.

Summary

Any relief from the shutdown for tribes, many of which are experiencing dire situations due to the shutdown, would be welcome. NCAI appreciates that Congressman Simpson (R-ID) and others in the House are working to include tribal programs in reopening critical governmental operations, albeit at sequester levels. Tribes in the Great Plains are in the middle of a roaring blizzard, airports are closed, flights are cancelled, and schools are closed in the midst of this shutdown. Tribes are dealing with emergencies such as assisting dialysis patients, assisting the elderly, and all without pay. In that context, NCAI thanks Congressman Simpson and Cole for their efforts in reopening critical governmental operations in Indian Country.

However, even if the shutdown is resolved soon, a larger crisis remains - both the House and Senate versions of a clean CR would sustain the devastating FY 2013 sequestration cuts. The failure to come to a budget agreement threatens the capacity of tribal governments to deliver basic governmental services to their citizens.

Outlook

Senator Reid has stated that Democrats would prefer to pass a clean CR at the current sequester level of spending, \$986 billion, to open all government operations before any further negotiations. The Obama administration earlier issued a veto threat against all of the piecemeal spending resolutions. The House passed other mini CRs to fund the National Parks (H.J. Res. 70), the National Institutes of Health (H.J. Res. 73), veterans (H.J. Res. 72) and the National Guard and reserves (H.R. 3230). In response to Senate Republican efforts seeking unanimous consent to pass the mini CRs, Senator Reid sought to amend the bills to reflect the full clean CR (H.J. Res. 59) that the Senate passed last week.

List of Mini Continuing Resolutions

Bill	Title	Latest action	House Ds voting yes
HR 3210	Military pay	President signed, Sept. 30	192
H J RES 70	National Parks	House passed, 252-173, Oct. 2	23
H J RES 71	District of Columbia	House passed by voice vote	-
H J RES 73	National Institutes of Health	House passed, 254-171, Oct. 2	25
HR 3230	National Guard, reserves pay	House passed, 265-160, Oct. 3	36
H J RES 72	Veterans affairs	House passed, 259-157, Oct. 3	35
H J RES 75	Women's, children's nutrition	House passed, 244-164, Oct. 4	22
H J RES 85	FEMA	House passed, 247-164, Oct. 4	23
HR 3223	Federal workers pay	House passed, 407-0, Oct. 5	189
H J RES 77	Food and Drug Administration	House passed, 235-162, Oct. 8	20
H J RES 84	Head Start	House passed 248-168, Oct. 8	23
H J Res 90	Federal Aviation Administration	House passed, 252-172, Oct. 9	23
H J Res 91	Military survivor benefits	Senate passed by UC, Oct. 10	197
H J RES 76	National Nuclear Security Admin.	Approved for House floor debate	
H J RES 78	National intelligence	Approved for House floor debate	
H J RES 79	Border security	Approved for House floor debate	
H J RES 80	Native American services	Approved for House floor debate	
H J RES 82	National Weather Service	Approved for House floor debate	
H J RES 83	Impact aid for local schools	Approved for House floor debate	

Take Action

NCAI continues to urge Congress to reopen government operations for all federal agencies that meet trust and treaty obligations to tribal nations and to stop sequestration for FY 2014. Funding for programs that fulfill the solemn agreements signed by our forebears has historically received bipartisan support in Congress. NCAI and tribes urge members of Congress to remember the bipartisan and respectful way in which trust and treaty promises have been addressed before.

Messages to Share with Congress

- Reopen government agencies, but ultimately, stop and replace sequestration, which unfairly breaks treaty promises to tribal nations.
- The FY2013 sequester and FY 2014 sequester harm critical services to American Indian/Alaska Native children, students, families, and the most vulnerable in our communities. Share specific stories.
- The trust responsibility is a federal commitment that should be honored in good budget times as well as in difficult budget times.

Summaries from Shutdown Contingency Plans

Department of Health and Human Services

- Indian Health Service (IHS) - IHS would continue to provide direct clinical health care services as well as referrals for contracted services that cannot be provided through IHS clinics.
- Administration for Children and Families (ACF) - ACF would continue mandatory funded programs including the Federal Parent Locator Service, Personal Responsibility Education, and Health Profession Opportunity Grants. Child support and foster care services will also continue because they receive advanced appropriations in the FY 2013 appropriation process. All permissible activities for the Unaccompanied Alien Children program under an exception of preserving human life will continue.
- Substance Abuse and Mental Health Services Administration (SAMHSA) - SAMHSA would continue programs such as the Disaster Distress Helpline, Treatment Locator, Treatment Referral Line, and Suicide Prevention Lifeline using available grant balances.

Activities that would not continue

- IHS would be unable to provide funding to Tribes and Urban Indian health programs, and would not perform national policy development and issuance, oversight, and other functions, except those necessary to meet the immediate needs of the patients, medical staff, and medical facilities.
- ACF would not continue quarterly formula grants for Temporary Assistance for Needy Families, Child Care, Social Services Block Grant, Refugee Programs, Child Welfare Services and the Community Service Block Grant programs. Additionally new discretionary grants, including Head Start and social services programs, would not be made.

Department of Interior

Out of a total of 8,143 employees in the office of the Assistant Secretary - Indian Affairs, BIA, and BIE, 2,860 will be furloughed.

Bureau of Indian Affairs

With a potential shutdown on October 1, 2013, the BIA will be required to administratively furlough all employees unless they are covered in an Excepted or Exempted positions. The BIA will also discontinue most of its services to tribes which will impact most programs and activities.

Services and programs that will remain operational:

- Law enforcement and operation of detention centers.
- Social Services to protect children and adults.
- Irrigation and Power - delivery of water and power.
- Firefighting and response to emergency situations.

Services and programs that would be ceased:

- Management and protection of trust assets such as lease compliance and real estate transactions.
- Federal oversight on environmental assessments, archeological clearances, and endangered species compliance.
- Management of oil and gas leasing and compliance.
- Timber Harvest and other Natural Resource Management operations.
- Tribal government related activities.
- Payment of financial assistance to needy individuals, and to vendors providing foster care and residential care for children and adults.
- Disbursement of tribal funds for tribal operations including responding to tribal government request.

Bureau of Indian Education

Funding for school operations is forward funded. Bureau of Indian Education funds are also available to sustain operations throughout the 2013-2014 School Year. The Department of Education has provided funds for the period July 01, 2013 through June 30, 2014. These funds and BIE funds will be used to maintain operations of education programs during a lapse of appropriations.

Services that will remain operational:

- All BIE funded schools, including Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute, will remain open.
- BIE will maintain staff required to provide a safe and secure environment for students in all schools.
- BIE will ensure all resources and capabilities to support school operations, facilities and communications infrastructure are in place.
- Transportation and maintenance of schools will continue.
- Contracted schools operations are forward funded and will remain open.

Housing and Urban Development

- Indian Housing Block Grant and Indian Community Development Block Grant recipients will still have access to their money but grantees who haven't returned their signed grant agreements will not have access. TA and training requests approved before today may still happen.
- Only excepted staff in the Office of Public and Indian Housing and the Office of Native American Programs will be available to respond to emergency issues. There will be no staff to answer non-emergency questions. The contact information for PIH emergency operations during the government shutdown will be posted on the HUD website.
- In the event of a government shutdown, all meetings and appearances related to non-excepted activities would be cancelled.
- No travel for the purposes of monitoring or technical assistance will take place during the government shutdown unless it is for emergency purposes.

US Department of Agriculture

- The Supplemental Nutrition Assistance Program (SNAP) will continue operations and eligible households will still receive monthly benefits for October. The authority to make October benefit payments comes from the Recovery Act, through which Congress provided "such sums as are necessary" to finance the SNAP benefit provided for in the Recovery Act. In addition, about \$2 billion in contingency funding will be available and could be used to support State Administrative activities essential to continue the program and issue and process benefits. These contingency funds were provided in the FY 2013 appropriation and do not expire until the end of FY 2014.
- No additional federal funds would be available to support the Special Supplemental Nutrition Program for Women, Infants and Children (WIC)'s clinical services, food benefits and administrative costs. States may have some funds available from infant formula rebates or other sources, including spend forward authority, to continue operations for a week or so, but States would likely be unable to sustain operations for a longer period. Contingency funds will be available to help States - but even this funding would not fully mitigate a shortfall for the entire month of October.
- Similarly, no new funds will be available to support the Food Distribution Program on Indian Reservations (FDPIR). While there would be some inventory available for use in food packages, no carryover, contingency or other funds would be available to support continued operations.

Department of Labor, Employment and Training Administration

- The Employment & Training Administration within the Department of Labor will cease operations - including the office administering the Native American Workforce Investment Act Program - except for: unemployment insurance; the operations of Job Corps centers through November 1, 2013; and the electronic systems needed to process Job Corps, National Emergency Grants for FEMA declared disasters, or other items.

Department of Education

- 90 percent of employees in the Department of Education will be furloughed.
- Elementary and Secondary Education Act (ESEA) Title I and II and Individuals with Disabilities Education Act (IDEA) Part B State Grants, and Career and Technical Education funds are already appropriated under advance appropriations formula grants to states.
- A protracted delay in Department obligations and payments beyond one week would severely curtail the cash flow to school districts, colleges and universities, and vocational rehabilitation agencies that depend on the Department's funds to support their services. For example, many school districts receive more than 20 percent of their funds from Department-funded programs. Colleges rely on Higher Education funds to pay ongoing expenses of staff running programs for disadvantaged students seeking to enter and stay in college. Vocational rehabilitation agencies receive 80 percent of the cost of providing services to adult individuals with disabilities from the Department's program.
- Under a shutdown, the likely disruption to Department grant programs will be a potential delay in activities necessary to make competitive and formula grant awards later in the year. For the most part, these employees will be furloughed. In addition, citizens and institutions seeking specific information regarding the impact of a shutdown will have limited access to information.

Many other programs that serve Indian Country may not be included in this short broadcast, but details may be found on the contingency plan website, <http://www.whitehouse.gov/omb/contingency-plans> or at specific agency websites.

Contract Support Costs Update

NCAI asks tribes to continue to urge Congress to not include language in any pending appropriations bill that would limit the amount of contract support costs rightfully owed to Tribes under the Indian Self-Determination Act. Any language modeled on the Administration request for a tribe by tribe cap would represent an enormous step backward in the Nation's dealings with Indian Tribes under the Indian Self-Determination Act (ISDEAA).

At NCAI's Midyear Conference in Jun 2013, tribes unanimously adopted resolution REN-13-015, "Request that the Administration Resolve Contract Support Costs Claims, Withdraw Its Proposal to Limit Contract Support Costs in Its FY 2014 Budget, and Support Full Contract Support Costs Funding" which, 1) calls upon the Administration, the Bureau of Indian Affairs, and the Indian Health Service to formally withdraw or abandon the Administration's FY 2014 budget proposal regarding contract support costs owed to Tribal contractors, and to communicate the same to the Budget and Appropriations Committees of the U.S. Congress; 2) calls upon Congress to reject any proposal to cut off the right of Tribes and tribal organization contracting and compacting under the ISDEAA to be paid their full CSC requirements, including the right to secure appropriate compensation for any

contract underpayments as specified in Section 110 of the ISDEAA; 3) calls upon the Administration to undertake a comprehensive, open, inclusive and transparent consultation process with Indian Country before advancing any proposal that would diminish tribal rights secured by Congress in the ISDEAA.

In June 2012, the Administration lost three historic cases in the Supreme Court, the Ramah case, the Arctic Slope case and the Southern Ute case. The Supreme Court found that the Bureau of Indian Affairs and the Indian Health Service violated the law by failing to fully pay the Tribes for services rendered to the United States under Indian Self-Determination Act contracts and compacts. Instead of complying with the law in the future, the Administration set out to change the law. It did this by proposing new language, the effect of which is to cut off future access to the courts for contract underpayments. If this language is enacted, once again Indian Tribes would be the only government contractors in the Nation whom the United States could cheat with impunity. The Administration developed this plan in secret, without any consultation with the Tribes and without any consultation with the authorizing committees.

The Supreme Court's decision has been interpreted by the Congressional Budget Office (CBO) as implicating a scoring issue. NCAI supports the House Appropriations Interior Subcommittee's approach, endorsed by the co-chairs of the House Native American Caucus, to altogether delete any mention of contract support costs. This bipartisan approach solves CBO's problems, leaves intact the Indian Self-Determination Act, and honors the Supreme Court's judgment that Indian tribal contractors must be treated at least as well as any other government contractor.



NATIONAL CONGRESS OF AMERICAN INDIANS

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Tulsa, Oklahoma

LEGISLATIVE AND ADMINISTRATIVE UPDATE

Brief Overview

On October 1, 2013, the United States federal government entered a shutdown, forcing furloughs of 800,000 workers and suspension of services not exempted by the Antideficiency Act. Because Congress did not enact regular appropriations or a continuing resolution for the 2014 fiscal year, appropriations have lapsed and about 800,000 federal employees were indefinitely furloughed without pay, while another 1.3 million were required to report to work without pay. The shutdown and related controversies over sequestration and the debt ceiling are taking a serious toll on the health and welfare of Indian people. It is our fervent hope that the impasse is resolved during the week of the NCAI Annual.

The year had a good start. In January, Congress passed amendments to the Stafford Act where tribal governments may seek a federal emergency declaration directly from the President of the United States. Then, in an historic vote on February 28th, the House passed the Violence Against Women Act of 2013, including the restoration of tribal criminal jurisdiction over all persons who commit acts of domestic violence within Indian country.

We continue to work with Congress regarding the tax status of Indian tribes, with several new bills introduced and a season of tax reform on the horizon. We are focused on the *Carciari* decision, the Farm Bill, Indian Housing, Education, Native languages, Workforce Investment, Magnuson-Stevens Act, and many others legislative topics. There are many local tribal bills pending for land, water and other matters. The Shutdown is causing great delays in improvements to federal policy.

Indian country is working with the Administration on a range of issues, including VAWA implementation, Tribal Law and Order implementation, Stafford Act implementation, Health Care implementation, Cobell implementation, tax issues, land to trust, trust reform, land consolidation, veterans, education, and economic development. Many in Indian Country were pleased recently with the nomination of Diane Humetewa to serve as a federal judge in Arizona, and are awaiting the confirmation of Keith Harper as the U.S. Representative to the United Nations Human Rights Council. Recently the President created the White House Council on Native American Affairs to help coordinate the work among federal agencies.

Recognizing the impact the across-the-board federal budget cuts are having on Indian Country, the **Budget Update** is provided in a separate document. The Legislative Update begins on the next page, and Administrative Updates follow. Tribal Tax is covered in a special section under “NCAI Initiatives.” All legislative bills may be found at <http://thomas.loc.gov>.

There is much more work to do. It is our great privilege to work with so many tremendous tribal leaders and advocates who have worked together to educate Congress and the Administration about our Indian Nations. Let’s keep up the good work together.

LEGISLATIVE

CARCIERI "FIX"

In February of 2009, the Supreme Court issued its decision in *Carciere v. Salazar*, which interpreted Section 19 of the Indian Reorganization Act. The Court held that the phrase "now under federal jurisdiction" within the definition of "Indian" limits the Secretary of Interior's ability to acquire land in trust to only those Indian tribes who were "under federal jurisdiction" in 1934. Indian tribes throughout the country have strongly disagreed with the opinion as contrary to longstanding interpretation by the Interior Department and because it creates uncertainty and risk of for many tribes. NCAI has been working with a coalition of tribal leaders and organizations to support the *Carciere* "fix" and prevent chaos in Indian land determinations.

This session of Congress, the legislation is pending in the House of Representatives, where there are two different versions. H.R. 279 is sponsored by Representative Tom Cole, and H.R. 666 is sponsored by Representative Ed Markey. H.R. 666 now has 30 co-sponsors including both Republicans and Democrats. No legislation has yet been introduced in the Senate. Given the nearly yearlong delay in introduction, Senator Cantwell, Chair of the Committee on Indian Affairs, appears to be mulling her options. The Committee has indicated that an oversight hearing on the issue may be held in the near future. NCAI encourages all tribes to maintain their strong efforts to gain co-sponsors and to pass land restoration legislation this year.

TRUST REFORM LEGISLATION

New legislation has been introduced in H.R. 409 (Simpson (R-ID)) & S. 165 (Crapo (R-ID)) – the Indian Trust Asset Reform Act. These bills reaffirm the federal government's fiduciary responsibilities to Indians and state that: (1) the most exacting common law fiduciary standards governing private trustees also govern the federal government when it manages Indian Trust Assets, and (2) those standards are not limited to the express terms of statutes and regulations.

The Indian Trust Asset Management Demonstration Project would direct the Secretary to establish an eight-year Indian trust asset management demonstration project that allows Indian tribes to propose, for the Secretary's approval, Indian trust asset management plans. The legislation also authorizes participating Indian tribes that contract or compact trust management functions or activities under the Indian Self-Determination and Education Assistance Act to develop and carry out trust asset management systems, practices, and procedures that differ from the Secretary's. Neither the Senate Committee on Indian Affairs nor the House Natural Resources Committee have yet scheduled a hearing

SELF-GOVERNANCE ACT AMENDMENTS

On May 9, 2013, Senator Cantwell introduced S. 919, a new version of legislation to make comprehensive amendments to Title IV of the Indian Self-Determination and Education Assistance Act, governing self-governance agreements with the Bureau of Indian Affairs and other bureaus under the Department of the Interior. The purpose of the legislation is to enhance self-governance by, among other things, making the DOI self-governance program consistent with its Indian Health Service counterpart in Title V. The legislation has stalled because of issues regarding compacting for Bureau of Reclamation. Efforts are underway to seek introduction of a similar bill in the House and to pass this legislation this session.



MARKETPLACE FAIRNESS ACT

Congress is again giving serious consideration to the Marketplace Fairness Act – which will permit states to collect sales taxes on internet sales and standardize sales tax jurisdictional rules for all participating states. The Senate passed version, S. 743, includes a tribal option to collect sales taxes when the sales are delivered on reservation. Given that tribal governments provides the roads, sewers, water, law enforcement and fire protection – tribal governments need this ability to generate government revenue to provide services and meet the needs of their citizens.

The House has yet to act on its version of this bill, H.R. 684. The bill currently sits within the jurisdiction of the House Judiciary Committee. Congress's Commerce Clause authority includes commerce "with the Indian tribes," and all tribes are urged to contact their representatives and make clear that any House bill should include tribal collection of taxes in Indian country.

CLIMATE CHANGE

NCAI is continuing its support of climate change initiatives through the passing of resolutions dealing specifically with affects that climate change has on tribes, whether it be relocation of villages, subsistence living or supporting a traditional way of life. NCAI also continues to work closely with our Climate Change partners.

NCAI worked in collaboration with Partners on proposed Senate Bill 1202, "Safeguarding America's Future and Environment Act; or the "Safe Act", and provided recommendations such as:

- 1) The removal of barriers for accessing federal funds for such efforts as the permanent relocation of qualified Alaska Native Villages;
- 2) Recognize Traditional Ecological Knowledge as relevant, accurate and accepted as a Science;
- 3) Enhance cooperation and coordination of natural resources adaptation efforts with other Federal agencies based on consultations with Indian tribes consistent with Executive Order 13175 and the United Nations Declaration on the Rights of Indigenous Peoples; and
- 4) Have no fewer than four tribal representatives with broad geographical representation on the Natural Resources Climate Change Adaptation Panel.

In dealing with the devastating effects of climate change, tribes require the federal government to step up its efforts to ensure federal cooperation, participation and adequate financing to tribes that rely on natural resources for their livelihood and traditional way of life.

INDIAN ENERGY SELF-DETERMINATION

This Congress energy issues have been active with several bills introduced. One of them, H.R. 1548, Native American Energy Act by Congressman Don Young (R-AK) amends the Indian land appraisal process; requires DOI to use a uniform system for oil and gas wells; enable tribes to review and comment on environmental impact statements; prohibits Interior from collecting certain fees; provides for biomass energy demonstration project on tribal forest lands; and prohibits the DOI rule regarding hydraulic fracturing. Another energy bill introduced in the Senate, S. 761, Energy Savings and Industrial Competitiveness Act of 2013, includes energy codes; technical assistances to develop energy codes; provides language for worker training and capacity building; and other energy efficiencies. NCAI continues to work on energy related issues by working with Bureau of Land Management on hydraulic fracturing and tribal lands and providing comments to the Senate Committee on Indian Affairs on energy development in Indian Country. The Committee is currently considering tribal energy legislation.



ALASKA SAFE FAMILIES AND VILLAGES ACT

This new legislation is intended to correct problems in the treatment of Alaska tribes regarding authority to address domestic violence. It was introduced August 1, 2013, by Senators Begich and Murkowski and referred to Senate Committee on Indian Affairs. The legislation calls for the repeal of Section 910 Special Rule for Alaska in VAWA 2013 as well as encouraging the State of Alaska to enter into intergovernmental agreements with Indian tribes in the State relating to the enforcement of certain State laws by Indian tribes. We urge all tribes to advocate for protection of Alaska Native women and families.

MAGNUSON-STEVENS ACT (REAUTHORIZATION)

The Magnuson-Stevens Fishery Conservation and Management Act is the primary statute governing fishing activities in federal waters and it expires at the end of Fiscal Year 2013. The House Committee on Natural Resources has held four oversight hearings on the reauthorization on March 13, 2013, May 21, 2013, June 27, 2013, and September 11, 2013. Senator Mark Begich (D-AK) has held a series of roundtables focusing on commercial, sport, and subsistence user/tribal concerns. In addition to that, Senator Begich has held one regional listening session two more planned for the fall. NCAI is advocating for the inclusion of tribal government appointees to the Regional Fishery Management Councils, charged with developing and implementing fishery management plans

ELEMENTARY AND SECONDARY EDUCATION ACT (REAUTHORIZATION)

Recently, the U.S. Senate Committee on Health, Education, Labor, and Pensions held a two day mark-up on S. 1094 – Strengthening America’s School Act of 2013 – and voted it favorably out of Committee along party lines. The bill incorporates a few Native education policy recommendations put forth by NCAI and other Native organizations; however, it includes neither language that would create more parity between tribes/tribal education agencies and state agencies, nor the access to the student data provision. NCAI is working with Congressional staff members to get additional tribal education priorities included in the bill during the amendment process on the Senate floor.

On the House side, NCAI working with other Native organizations and Rep. Don Young (R-AK) successfully passed a bipartisan amendment to the Republican ESFA reauthorization bill, H.R. 5, the Student Success Act, which took the Indian Education section out of Title I (where it was moved to) and restored it back as a separate title and restored Alaska Native and Native Hawaiian sections. H.R. 5, with the Indian education amendment passed the House 221 to 207. Unfortunately, education is a politically divisive issue, and it could be difficult for both chambers to come to a consensus on final legislation.

NATIVE AMERICAN PROGRAMS ACT (INCLUDING THE ESTHER MARTINEZ NATIVE AMERICAN LANGUAGE PRESERVATION ACT)

The Native American Programs Act, a law that authorizes the Administration for Native Americans and includes the Esther Martinez Native American Languages Preservation Act, is up for reauthorization. Thus far, Congressman Lujan’s (D-NM) bill reauthorizing the Esther Martinez Initiative, H.R. 726, is the only reauthorizing vehicle that has been introduced in this Congress. NCAI and our partners continue to work with Congress to reauthorize both the Esther Martinez Act, as well as the larger Native American Programs Act.



WORKFORCE INVESTMENT ACT (REAUTHORIZATION)

The Workforce Investment Act (WIA) of 1998 includes a Native American Program that supports unemployed, under-employed, and under-skilled American Indians, Alaska Natives, and Native Hawaiians, through a network of 175 grantees. Senator Patty Murray (D-WA) and Senator Johnny Isakson (R-GA) led the effort to craft bi-partisan WIA reauthorization, the Workforce Investment Act of 2013 (S. 1356), which passed in the Senate Committee on Health, Education, Labor & Pensions on July 31, 2013. This bill adds a new performance accountability system to WIA programs, but would essentially preserve the Native American Program as it currently stands. This bill has yet to be scheduled for a vote on the Senate floor.

Conversely, Representative Virginia Foxx (R-NC) introduced the Supporting Knowledge and Investing in Lifelong Skills (SKILLS) Act (H.R. 803), which passed the House of Representatives earlier in the year on March 15, 2013. The SKILLS Act would consolidate 35 programs and create a Workforce Investment Fund to serve as a single source of support for employers, workers, and job seekers. While this bill would reserve 1 percent of funding as a tribal set-aside, it would eliminate the Native American Program and all its critical functions.

NCAI continues to closely monitor and advocate on essential opportunities for Native people to develop the skills necessary for job entry, reentry, advancement, and security.

FARM BILL (REAUTHORIZATION)

The U.S. Senate passed its Farm Bill, S. 954 – Agriculture Reform, Food, and Jobs Act of 2013, on June 10, 2013 by a vote of 66-27. The bill includes: a feasibility study for Indian tribes to administer federal food assistance programs; authorization for tribes who administer food distribution programs to use five percent of the program funds for traditional and locally-grown food from Native producers; tribes as eligible entities for conservation programs; and a rural gigabit pilot program. The bill also includes a \$4 billion cut to the Supplemental Nutrition Assistant Program (SNAP) over ten years.

The U.S. House Committee on Agriculture has reported its Farm Bill, H.R. 1947, the Federal Agriculture Reform and Risk Management Act of 2013, out of committee. The bill, which would have cut SNAP by \$20.5 billion dollars over ten years, was voted down on the House floor, 195-234, because it did not reform and cut SNAP enough. House Republican leadership removed the Nutrition Title from the Farm Bill and put forward a “farm-only” bill, H.R. 2642, which passed on 216-208 on partisan lines. H.R. 2642 cuts SNAP by \$39 billion over ten years and only authorizes SNAP for three years, whereas the Farm Bill would be authorized five years. Further, it end states’ ability to waive the three-month limit on SNAP benefits childless, nondisabled adults who are unable to find work and allows states to end SNAP benefits to most adults who are receiving or applying for SNAP—including parents with children as young as 1 year old—if they are not working or participating in a work or training program for at least 20 hours per week despite being in areas with little-to-no employment opportunities. In September 2013, The House voted on a stand-alone Nutrition Title, H.R. 3102 – the Nutrition Reform and Work Opportunity Act of 2013, which narrowly passed the House on along party lines 217-210.

The House combined the House-passed H.R. 2642 and H.R. 3102 to allow both bills to be conferenced with the Senate. House yet to appoint their conference conferees, but the Senate conferees are: Sens. Debbie Stabenow (D-MI), Patrick Leahy (D-VT), Tom Harkin (D-IA), Max



Baucus (D-MT), Sherrod Brown (D-OH), Amy Klobuchar (D-MN), Michael Bennet (D-CO), Thad Cochran (R-MS), Pat Roberts (R-KS), Saxby Chambliss (R-GA), John Boozman (R-AR), and John Hoeven (R-ND). The conference on the Farm bill is likely to very devise over SNAP cuts.

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

Native American Housing Assistance and Self-Determination Act of 2008 (NAHASDA) authorizes and administers Indian housing programs within the U.S. Department of Housing and Urban Development for American Indian and Alaskan Natives to provide safe and descent housing. The current authorization of the Native American Housing Assistance and Self-Determination Act of 2008 (NAHASDA) expired on September 30, 2013.

Both the House and Senate have been working all year on a reauthorization, and held congressional hearings and listening session to help draft legislation. On July 24, 2013, the Senate Committee on Indian Affairs introduced S. 1352, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2013. A couple days after the formal introduction of S.1352, the Senate Indian Affairs Committee held a legislative hearing on July 31st. The purpose of the legislative hearing was to gather information from hearing witnesses to provide comments on S. 1352. NCAI provided oral and written testimony on S. 1352, and NCAI emphasized the importance of NAHASDA and the accomplishments tribes have made on housing infrastructure but also discussed the continuing need for housing is still in demand from tribal members.

The House Committee on Financial Services who has primary jurisdiction on NAHASDA has not introduced a NAHASDA reauthorization. NCAI will continue to monitor and work with Congress to ensure NAHASDA is reauthorized.

WELFARE REFORM (REAUTHORIZATION)

The Temporary Assistance for Needy Families (TANF) is a federal block grant program designed to help needy families achieve self-sufficiency. Currently, there are 68 tribal TANF grantees serving nearly 300 American Indian and Alaska Native tribes. TANF was originally scheduled for reauthorization in 2010, but Congress has instead has issued several extensions to maintain funding. However, the current extension of TANF expired on September 30, 2013 in concurrence with the federal government shutdown.

In partnership with tribal leaders and program representatives, NCAI established a TANF Task Force to develop national tribal priorities for the TANF reauthorization. NCAI TANF Task Force is closely monitoring and advocating for the reauthorization of TANF and to advance national tribal TANF priorities.

IMMIGRATION

The bipartisan effort to craft an effective and comprehensive immigration reform has resulted in a S. 744, The Border Security, Economic Opportunity, and Immigration Modernization Act, that addresses issues affecting all segments of American society, including tribal nations. S. 744 includes a few overarching themes that directly impact tribal communities, including an effort to secure U.S. international borders, with specific emphasis on securing the southwest border, and includes funding dedicated to southwest border security for the next ten years. Another key element is an employment verification system in which all employers will eventually be required to



participate, and employers will have to accept only DHS-approved documentation, such as enhanced driver's licenses or tribal IDs, to verify the work-authorization status of employee applicants. The new system would be developed by the Department of Homeland Security (DHS). Democrats in the House of Representatives have proposed a nearly-identical bill to S.77, while House Republicans are proposing a series of smaller immigration bills. NCAI will continue to work with both the Senate and House to advocate for tribal inclusion in any comprehensive immigration bill.

ADMINISTRATION AND IMPLEMENTATION UPDATES

White House Council on Native Affairs

President Obama issued an Executive Order on June 26, 2013, establishing the White House Council on Native Affairs. On July 29, 2013, Secretary of the Interior Sally Jewell convened the inaugural meeting of the White House Council on Native American Affairs, launching President Obama's national policy initiative to make federal agencies work more collaboratively and effectively with federally recognized tribes to advance their vital economic and social priorities. Joining Secretary Jewell at the White House meeting were Senior Advisor to the President Valerie Jarrett, White House Domestic Policy Director Cecilia Muñoz, Agriculture Secretary Tom Vilsack, Labor Secretary Thomas Perez, Health and Human Services Secretary Kathleen Sebelius, Transportation Secretary Anthony Foxx, and Education Secretary Arne Duncan.

The Council, which includes more than 30 federal departments and agencies, coordinates the Administration's engagement with tribal governments and works across executive departments, agencies and offices to develop policy recommendations and expand efforts to leverage federal programs and resources available to tribal communities.

The Council, which will meet at least three times a year, will focus its efforts on advancing five priorities that mirror the issues tribal leaders have raised during previous White House Tribal Nations Conferences:

- 1) promoting sustainable economic development;
- 2) supporting greater access to and control over healthcare;
- 3) improving the effectiveness and efficiency of tribal justice systems;
- 4) expanding and improving educational opportunities for Native American youth; and
- 5) protecting and supporting the sustainable management of Native lands, environments, and natural resources.

The President's national policy initiative advances his Administration's concerted efforts to restore and heal relations with Native Americans and strengthen the nation-to-nation relationship between the United States and tribal governments, bolstering the federal policies of self-determination and self-governance that will help American Indian and Alaska Native leaders build and sustain their own communities.

The Executive Order establishing the Council also institutionalized the White House Tribal Nations Conference as an annual event. The White House announced this year's Tribal Nations Conference will take place on **November 13, 2013**. Held each year since the President came into office, the conferences have brought together leaders from all federally recognized tribes with Cabinet members and senior Administration officials. President Obama has hosted the conference four times since 2009.



COBELL SETTLEMENT

The *Cobell v. Salazar* settlement was finalized in December 2013 after approved by Congress and all appeals were exhausted. The settlement was for \$3.4 billion, approximately \$1.5 billion of which was to pay individual Indian trust beneficiaries for past accounting problems and resolve historical asset mismanagement claims. Another \$1.9 billion will be used primarily to buy interests in trust lands that are “fractionated interests,” called the Land Buy-Back program.

The payment of the \$1.5 billion to individuals is in two stages: the Historic Accounting Class (HAC) and the Trust Administration Class (TAC). Checks for the HAC in the amount of \$1,000 were distributed by the Garden City Group (GCG), the Claims Administrator for the *Cobell* Settlement, starting in December 2012 to individuals across the country who were determined, according to the records of the Department of Interior to either be alive or have an estate in probate on September 30, 2009, and to have had an open and active Individual Indian Money (IIM) account during any period between October 25, 1994 and September 30, 2009.

As of the end of September 2013, payments have been made to more than 90 percent of those eligible, totaling more than \$236,940,000.00, with 33,400 remaining estate cases and an estimated 11,000 remaining on the Whereabouts Unknown (WAU) list for the HAC. Special efforts are being conducted to continue to settle the estates and locate individuals whose whereabouts are unknown.

Eligibility for the Trust Administration Class is being finalized. The deadline for filing a claim for the TAC was March 1, 2013, and determination letters were sent on May 1, 2013 to more than 375,000 individuals. If individuals already received a payment under the Historical Accounting Class they did not need to file again for the TAC. On August 1, 2013, the Claims Administrator mailed letters detailing its second determination of eligibility to all persons who filed a request for reconsideration. The Special Master, the Honorable Richard Levie (ret.), is presently considering appeals from those determinations. Payments for the TAC, expected before the end of 2013 upon court approval, will be a base amount of \$800, with some class members receiving an additional amount depending on account activity. At the present time, there are an estimated 496,540 individual Indian beneficiaries in the TAC of which 88,265 do not have address information.

LAND BUY-BACK PROGRAM

The Cobell settlement provides for a \$1.9 billion Trust Land Consolidation Fund and charges the Department of the Interior with the responsibility to expend the Fund within a 10-year period to acquire fractional interests in trust or restricted fee land that individuals are willing to sell. Those interests will be transferred to the tribal government with jurisdiction over the land. The Land Buy-Back Program has been established by the Department of Interior to implement this aspect of the Settlement. The overall goal of the Land Buy-Back Program is to reduce the number of those fractional interests through voluntary land purchases, which will produce more consolidated tribal trust land bases.

The Department has prepared an Initial Implementation Plan for the Land Buy-Back Program based on preliminary planning and tribal consultation. The Department expects to continually update its plans to reflect tribal feedback, lessons learned, and best practices. Tribal consultation sessions on the Plan and Land Buy-Back Program were held in early 2013 in Minneapolis, Rapid City, and Seattle. Key issues at the consultations included the urgency to get the program started,



cooperative agreements with tribal governments for participation in the program, the status of permanent improvements, concerns about the ability to conduct appraisals in a timely way, and land title processing. On October 7 and 8 NCAI hosted two webinars on the topic with Interior (which are available on our website for review) and continues to closely monitor.

KEEPSEAGLE SETTLEMENT

The *Keepseagle* case with the U.S. Department of Agriculture for discrimination in the USDA Farm Loan Program was settled on December 27, 2011 for \$760 million. Payments were made in August and September 2012 to 3,600 claimants with those in Track A receiving \$50,000 and those in Track B receiving \$250,000. The settlement also includes payment of the taxes on settlement proceeds and payment/reduction of outstanding debt.

The final action is the disposition of the \$380 million remaining of the original \$760 million settlement after all payments to successful claimants. To assure that the remaining funds would continue to benefit American Indian agriculture into the future, class counsel has submitted proposals to the U.S. Departments of Agriculture (USDA) and Justice (DOJ) to establish with the \$380 million an independent foundation that would serve Native American farmers and ranchers. Negotiations for this modification of the original settlement with USDA and DOJ are ongoing. It is anticipated that discussions about these proposals will take place in the Agriculture Subcommittee meeting at the 2013 NCAI Annual Convention.

ATTORNEY GENERAL'S TASK FORCE ON NATIVE CHILDREN EXPOSED TO VIOLENCE

Attorney General Eric Holder announced that Acting Associate Attorney General Tony West will oversee the creation of the Task Force on American Indian/Alaska Native Children Exposed to Violence. The proposed task force will be a joint effort between the Departments of Justice and Interior and tribal governments. The task force will focus on:

- Improving the identification and treatment of American Indian and Alaska Native children exposed to violence;
- Supporting American Indian and Alaska Native communities and tribes as they define their own responses to this problem; and
- Involving American Indian and Alaska Native youth in developing solutions.

The creation of the Task Force on American Indian/Alaska Native Children Exposed to Violence was one of 56 recommendations made by the Attorney General's National Task Force on Children Exposed to Violence.

VIOLENCE AGAINST WOMEN ACT 2013: PUTTING SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION INTO ACTION

President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) into law on March 7th. The legislation marks a significant victory for Indian tribes and for the NCAI Task Force on Violence Against Women. The Department of Justice moved quickly in publishing proposed procedures for the VAWA Tribal Pilot Project on June 14th—with comments due on September 12th. The Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (VAWA ITWG) came together for the first in-person meeting at the National Advocacy Center in Columbia, South Carolina. The VAWA ITWG is focused on learning about best practices for the required criminal procedures. The second in-person meeting



of the VAWA ITWG will take place before the DOJ OVW's Annual Tribal Consultation in Bismarck, North Dakota on October 31st.

The next step in implementation awaits the final publication of the DOJ's Application Questionnaire for the VAWA Tribal Pilot Project in late October or early November 2013. With the Application Questionnaire, tribes who have justice systems in place to meet VAWA 2013's statutory requirements may request the Attorney General immediately designate the tribe as a participating tribe. After March of 2015 any tribe may implement without prior approval.

TRIBAL LAW & ORDER ACT (TLOA) IMPLEMENTATION

This summer marked the three-year anniversary of the enactment of the Tribal Law & Order Act. It is important to note that the extended sentencing provisions were the precursor to the VAWA jurisdictional expansion over non-Indian domestic violence offenders. In the near future, tribal justice systems will likely proceed with extended sentencing and VAWA implementation in tandem. NCAI will be working to help share information among all interested tribes.

A number of tribes have implemented extended sentencing authority, and two tribes (Umatilla and Eastern Band of Cherokee) have already sentenced defendants to federal prison under the Bureau of Prisons pilot project. TLOA only authorized the Bureau of Prisons Pilot Project for four (4) years. The BOP Pilot Project is slated to end on November 26, 2014.

On June 1, 2013, the first assumption of concurrent Federal jurisdiction under TLOA became effective on the 1,300 square-mile White Earth Reservation in northern Minnesota. The Department of Justice published its final rule on December 6, 2011, on Assumption of Concurrent Federal Jurisdiction on PL280 Reservations under the TLOA. The rule establishes the procedures for an Indian tribe whose Indian country is subject to State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)).

The Department of Justice released a report to Congress entitled *Indian Country Investigations and Prosecutions* which provides a range of enforcement statistics required under the Tribal Law and Order Act of 2010. The report, based on data compiled from the case management system used by U.S. Attorney's Offices (USAO) with Indian Country jurisdiction shows among other things a 54 percent increase in Indian Country criminal prosecutions since Fiscal Year 2009. The entire report is located at www.justice.gov/tribal/tloa-report-cy-2011-2012.pdf and included on your conference lanyard.

For more information and updates about TLOA implementation, we urge you to review the Tribal Law & Order Resource Center website at <http://www.ncai.org/tloa>. This website, created as part of the Tribal-State Collaboration and Justice Capacity Building Project, is an interactive website, the aim of which is to disseminate information about tribal justice, track implementation of TLOA, post upcoming events, and create a network of key criminal justice stakeholders.

EMERGENCY RESPONSE – TRIBAL AMENDMENTS TO THE STAFFORD ACT

The Sandy Recovery Improvement Act of 2013 became law on January 29, 2013, and it amended the Stafford Act to permit federally recognized tribal governments to apply directly to the President for a Federal emergency or major disaster declaration and for direct Federal assistance. Tribes also remain eligible to seek assistance through requests made by the states. On March 1st, 2013, the President implemented the new law for the first time, declaring a major disaster for the Eastern Band of Cherokee Indians. The President ordered Federal aid to supplement the Tribe's efforts in



the area affected by severe storms, flooding, landslides, and mudslides during the period of January 14-17, 2013. Several other tribes have benefited from the direct line to the President for major disaster declaration and Federal assistance: Navajo Nation (severe freeze); Standing Rock Sioux Tribe (severe storms/flooding); Karuk Tribe (wildfire); and Santa Clara Pueblo (severe storms/flooding).

To implement the amendment, FEMA issued a Federal Register notice on March 8, 2013 soliciting public comments on how it should adapt its existing requirements in order to make them appropriate to tribes. Comments were due April 22, 2013, and NCAI submitted comments. FEMA also announced that it will ease its way into this new relationship with tribes by initiating a pilot program, but it did not set out the scope of the pilot program or indicate how it will choose participating tribes.

HEARTH ACT IMPLEMENTATION

The Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act became law on July 31, 2012. The Act authorizes surface leasing of tribal lands without approval from the Secretary of the Interior. Instead, tribal leases can be approved by the tribe under tribal leasing regulations. The new law will enable tribes to move more quickly on leasing and economic development, while maintaining the Secretary's trust responsibility to oversee trust lands. The BIA has already approved several tribal leasing codes.

Several tribes have already received BIA approval of their leasing regulations. Tribal leasing codes must be consistent with the BIA's recently updated leasing regulations, 25 C.F.R. 162. The BIA has also published a National Policy Memorandum containing a list of criteria that should be considered. Key requirements include leasing code development and an environmental review process. NCAI conducted a webinar in March that featured an attorney from Navajo Nation who discussed Navajo's leasing-code development and implementation process over the past ten years. A recording of the webinar can be viewed at: <http://www.youtube.com/watch?v=CHI5BHyLrWI&feature=youtu.be>.

HEALTH CARE IMPLEMENTATION

On October 1, 2013, the Health Insurance Marketplaces starting enrolling individual consumers in Medicaid, Medicare, and, in many cases, private insurance. Even though the marketplaces launched recently, there are still questions about the implementation of Indian exemptions raised by NCAI and others in 2010.

The Department of Health and Human Services announced a regulatory fix to the definitional issues in the law at the NCAI Mid-Year Conference to extend the statutory exemption for members of federally recognized tribes to descendants and IHS beneficiaries. A process is still being developed to issue Waiver documentation to IHS beneficiaries. Initially, the marketplaces will not be able to electronically identify IHS patients as we expected. In the meantime, IHS is developing a paper form that will be issued by local facilities to American Indians and Alaska Natives who are eligible for the hardship waiver.

NCAI has worked closely with other national and regional partners through the National Indian Health Outreach and Education Initiative to help consumers understand their rights,



responsibilities, and opportunities under the law. You can learn more about the law and the partnership's work at www.tribalhealthcare.org.

NCAI Initiatives

THE 2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES

NCAI's international work of late has focused on providing technical assistance and education for tribal leadership interested in engaging in international indigenous discussions within the United Nations. This work has been guided by the upcoming World Conference on Indigenous Peoples (WCIP), a high-level plenary meeting scheduled to occur in 2014, where members of the UN will meet and discuss outcome recommendations on how to implement the UN Declaration on the Rights of Indigenous Peoples.

The Department of State invited tribal leaders and Indigenous organizations from across the nation to attend a listening session on October 11, 2013 in Washington, DC to discuss preparations for the United Nations' WCIP. Due to the federal government's shutdown, this listening session was postponed. The purpose of the listening session is to solicit recommendations from tribal government leaders and indigenous organizations about the agenda and objectives for the WCIP. In order to support tribes as they prepare for the listening session, NCAI hosted a webinar on October 3, 2013. The webinar provided background information about the WCIP and gave attendees an opportunity to coordinate in advance of listening session.

TRIBAL WATER RIGHTS WORKGROUP

NCAI Water Rights Working Group consists of technical experts, such as tribal water resource managers, policy experts and attorneys with past experience in water settlement matters. The group continues to maintain a close working relationship with an ad hoc Indian water rights settlement group, which consists of individuals representing the Native American Rights Fund, the Western Governors Association, and the Western States Water Council.

Shortly after the 113th Session of Congress convened, NCAI joined the ad hoc Indian water rights settlement group for meetings on Capitol Hill to discuss the need for the federal government to ensure funding is available for Indian tribes to quantify their water rights through the Congressional settlement process. Even during the current budget climate, it is important for tribes to tell Congress that the right to water is a fundamental need for Indian tribes, and that as first stewards of this land, tribal rights to water relate back to—at a minimum—the establishment of the reservation, often superseding the water rights of neighboring non-Indian communities.. This makes the settlement process even more crucial because water rights left unsettled lead to uncertainty for all, and often costly and time-consuming litigation.

NCAI continues to reach out and help engage its members in discussions on best practices for managing water resources. For instance, we have hosted several webinars and outreach meetings on the importance of quantifying water and the importance of developing sound water management tools within the regulatory jurisdiction of the Indian tribe. Also, we are planning future webinars on federal perspectives for approving tribal water codes, and will host an informative breakout session on water settlements at this year's Annual Convention.



TRUST REFORM

The Secretary of Interior has established a Trust Reform Commission chaired by President Fawn Sharp of the Quinault Nation and including Chairman Tex Hall of the Mandan, Arikara & Hidatsa Nation. The Commission is working to improve the trust system for the future. NCAI has engaged the Commission on this issue and is promoting seven areas of reform.

- 1) Reintegrating the BIA Office of Special Trustee functions under the high level guidance of a Deputy Secretary for Indian Affairs, who would also oversee trust functions in other divisions of Interior such as BLM.
- 2) Creating a separate oversight/audit function.
- 3) Focusing resources at the reservation level on support of tribal resource management.
- 4) Creating a self-determination mechanism to increase tribal control over tribal lands and funds, while maintaining federal trust oversight.
- 5) Including a tribal planning process within the self-determination mechanism, which would benefit self-governance and direct service tribes, as well as economic development in Indian country.
- 6) Streamlining processes and regulations to expedite transactions—particularly appraisals and title, two significant bottlenecks in the trust process.
- 7) Addressing fractionation of individual Indian land title, not only through the Buy-Back program, but also through a targeted estate planning program.

TAX INITIATIVE

NCAI's tribal tax policy strives for national partnerships and broad engagement with tribal leaders and tax policy experts. In doing so, NCAI has reached out at national meetings, through its broadcast system, and through hosting a series of extensive webinars on key tax issues affecting Indian tribes, to develop strong tribal tax priorities that reflect the diverse needs of tribes.

More recently, NCAI has worked in collaboration with intertribal organizations, which include the Affiliated Tribes of Northwest Indians, the California Association of Tribal Governments, the Midwest Alliance of Sovereign Tribes, the United South and Eastern Tribes, the United Indian Nations of Oklahoma, Texas, and Kansas, as well as the Native American Finance Officers Association, to develop joint comments to the IRS and Treasury to address the tax implications of tribal government programs. Also, NCAI is currently in the midst of gathering key legislative tax priorities to present to Congress on behalf of Indian tribes. Our current tax priorities focus on achieving government fairness in tribal tax law, and findings incentives to create businesses and jobs on the reservation. We encourage all tribes to participate in these discussions, and we look forward to continuing our work advocating for stronger tribal nations' regulatory tax authority and tax status. The following is a brief list of the major tax issues we are addressing.

- 1) General Welfare Exclusion, H.R. 3043 and S. 1507, IRS Update of Notice 2012-75
- 2) Per Capita Act and distributions from trust resources, IRS expansion of Notice 2012-60
- 3) IRS Audit of Social Security withholding – pending NCAI Resolution TUL-13-049.
- 4) H.R. 3030 “Tribal Tax & Investment Reform Act of 2013,” would amend IRS code to treat tribal governments in the same manner as state governments for:
 - Tribal government bonds – parity on tax-exempt bonds
 - Tribal government pension plans



- Tribal foundations and charities
 - Tribal child support enforcement agencies
 - Tribal access to Clean Renewable Energy Bonds
- 5) H.R. 2332 - Adoption Tax Credit Tribal Parity Act of 2013- would amend the IRS code to ensure tribal courts are able to make special needs determination for adoption tax credits.
 - 6) Tribe to Tribe Trade Legislation – Three pending resolutions in Tax Subcommittee.
 - 7) Marketplace Fairness Act – S. 743 has passed Senate with tribal governments included. Chairman Goodlatte of House Judiciary has released principles for a House version.
 - 8) Taxation of Permanent Improvements on Trust Land – continued advocacy with Interior
 - 9) Tobacco Tax Litigation regarding PACT Act and Tobacco Master Settlement Agreement

TELECOMMUNICATIONS

On August 29, 2013, the Office of Management and Budget (OMB) approved the Tribal Government Engagement Obligation Provisions (Tribal Engagement Provisions) proposed by the Federal Communications Commission (FCC) in the Connect America Fund (CAF) Order. The reforms adopted by the FCC to create the CAF included proposals to increase accountability on telecommunications providers receiving funds to serve tribal lands. These new accountability standards now require telecommunications providers serving tribal lands to have and document ‘meaningful discussions’ with tribal governments to deploy broadband services on tribal lands. NCAI participated in numerous filings and meetings to preserve and protect the Tribal Engagement Provisions.

NCAI has been working with members of the House Communications & Technology Subcommittee to include language authorizing permanent funding for the FCC’s Office of Native Affairs and Policy in the Federal Communications Commission Reform Process Act.

NCAI has also been working with Congress to support introduction of legislation creating a Tribal Broadband Fund (TBF). The TBF would provide targeted funding to tribal communities for broadband infrastructure deployment and upgrades, and provide funding for technical training. However, introduction of this legislation has been delayed due to on-going budget issues and determination of funding criteria.

If you have questions regarding this update, please contact NCAI Staff *John Dossett*, jdossett@ncai.org; *Gwen Salt*, gsalt@ncai.org; or *Natasha Anderson*, nanderson@ncai.org.